

# **EXHIBIT “A”**

# **EXHIBIT “A”**

FILED  
Electronically  
CV20-01426  
2020-09-11 11:43:05 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8063265 : yvildria

1 Code 3860  
2 STEVEN M. HESS, ESQ.  
3 State Bar #2251  
4 HESS & ASSOCIATES  
5 KYLE S. HESS, ESQ.  
6 State Bar #13351  
7 485 West 5<sup>th</sup> Street  
8 Reno, NV 89503  
9 (775) 323-1311  
10 Attorneys for Plaintiff

11  
12  
13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
14 **IN AND FOR THE COUNTY OF WASHOE**

15 KATHRYN AGNEW,  
16  
17 Plaintiff,

18 v.

CASE NO.: CV20-01426

DEPT. NO.: 1

19 SMITH'S FOOD KING PROPERTIES,  
20 INC., doing business as a Foreign  
21 Corporation, SMITH'S FOOD & DRUG  
22 CENTERS, INC., doing business as a  
23 Foreign Limited-Liability Company,  
24 KROGER DEDICATED LOGISTICS, CO.,  
25 doing business as a Foreign  
26 Corporation and DOES I-V,  
27 inclusive,

28 Defendants.

**COMPLAINT FOR DAMAGES**

29 COMES NOW Plaintiff, KATHRYN AGNEW by and through counsel, HESS  
30 & ASSOCIATES, and for cause of action as to the Defendant, and each of them, alleges  
31 and complains as follows:

**STATEMENT OF FACTS**

32 1. Events and occurrences hereinafter alleged occurred within the confines of the  
33 State of Nevada.

1           2. Plaintiff, KATHRYN AGNEW, is an individual, and at all times herein mentioned was  
2 residing within the County of Washoe, State of Nevada.  
3

4           3. The true names and capacities, whether individual, corporate, associate or  
5 otherwise of DOES 1 through 5, inclusive, are unknown to the Plaintiff and Plaintiff  
6 therefore sues them by such fictitious names. Plaintiff will amend this complaint to  
7 allege their true names and capacities when ascertained. Plaintiff is informed and  
8 believes and thereon allege that each of the fictitiously named Defendant is liable to the  
9 Plaintiff in some manner of the occurrences herein alleged.  
10

11           4. Plaintiff is informed and believes, and upon such information and belief alleges,  
12 that the events herein occurred in the County of Washoe, State of Nevada.

13           5. Defendants, SMITH'S FOOD KING PROPERTIES, INC., SMITH'S FOOD & DRUG  
14 CENTERS, INC., and KROGER DEDICATED LOGISTICS, CO., are responsible for keeping  
15 the property safe for its patrons.  
16

17           6. On or about September 28, 2019, Plaintiff, KATHRYN AGNEW, had arrived at  
18 Smith Food and Drug located at 1255 Baring Boulevard in Sparks, Nevada. As she was  
19 walking toward the entrance of the store, she fell after putting her right foot in a large hole.  
20 The large hole in the asphalt was filled with uneven cobblestone and surface water. The  
21 cobblestone and water made the hole unnoticeable.

#### 22                           CLAIM FOR RELIEF

23           7. Defendants, SMITH'S FOOD KING PROPERTIES, INC., et al, were responsible for  
24 maintaining a safe and secure property for its patrons. They had a duty to inspect the  
25 property for defective and dangerous conditions and to keep the property in a reasonably  
26 safe condition and free of hazards. SMITH'S FOOD KING PROPERTIES, INC., et al, were  
27 negligent for failing to maintain the property in a safe condition. Due to said negligence,  
28 Plaintiff has suffered injuries.


1 WHEREFORE, Plaintiff, and each of them, pray for judgement against the  
2 Defendants as follows:

- 3 1. For Judgement for special damages according to proof;  
4 2. For judgement for general damages in the amount in excess of  
5 \$15,000.00;  
6 3. For attorney's fees and costs;  
7 4. For such other and further relief as to this Court may seem just and  
8 proper in the premises.

9 AFFIRMATION

10 Pursuant to NRS 239B.030, the preceding document does not contain the social  
11 security number of any person.

12 DATED this 11 day of September, 2020.

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18 HESS & ASSOCIATES  
19 Attorneys for Plaintiff  
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Electronically  
CV20-01426  
2020-09-15 03:32:15 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8068609

1 STEVEN M. HESS, ESQ.  
2 State Bar #2251  
3 HESS & ASSOCIATES  
4 KYLE S. HESS, ESQ.  
5 State Bar #13351  
6 485 West 5<sup>th</sup> Street  
7 Reno, NV 89503  
8 (775) 323-1311  
9 Attorneys for Plaintiff

10  
11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR THE COUNTY OF WASHOE**

13 KATHRYN AGNEW,  
14  
15 Plaintiff,

16 v.

CASE NO.: CV20-01426

DEPT. NO.: 1

17 SMITH'S FOOD KING PROPERTIES,  
18 INC., doing business as a Foreign  
19 Corporation; SMITH'S FOOD & DRUG  
20 CENTERS, INC., doing business as a  
21 Foreign Limited-Liability Company,  
22 KROGER DEDICATED LOGISTICS, CO.,  
23 doing business as a Foreign  
24 Corporation and DOES I-V,  
25 inclusive,

26 Defendants.

27 **PROOF OF SERVICE**

28 COMES NOW Plaintiff, KATHRYN AGNEW, by and through counsel of record,  
HESS & ASSOCIATES, and respectfully submits to this Court the attached DECLARATION  
OF SERVICE on Defendant, SMITH'S FOOD & DRUG CENTERS, INC.

**AFFIRMATION**

Pursuant to NRS 299B.030, the preceding document does not contain the social  
security number of any person.

1 DATED this 15 day of September, 2020.

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5 HESS & ASSOCIATES  
6 Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of HESS & ASSOCIATES, and that on this date I served a copy of the foregoing document on the following parties:

✓  
\_\_\_\_\_

Placing a true copy thereof in a sealed envelope and depositing the same in the United States Mail at Reno, Nevada, postage fully prepaid, following ordinary business practices.

\_\_\_\_\_

U.S. Mail, Certified, Return Receipt Requested.

\_\_\_\_\_

Personal service

\_\_\_\_\_

Facsimile (FAX)

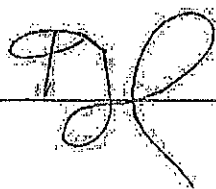
\_\_\_\_\_

Email

addressed to:

Smith's Food & Drug Centers, Inc.  
Kroger Dedicated Logistics, Co.  
112 North Curry Street  
Carson City, NV 89703

Dated: 9/15/20

SIGNED: 

CODE 1087

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE

Kathryn Agnew,

Plaintiff(s),

VS.

CASE NO: CV20-01426

Smith's Food King Properties, Inc., et al,

Defendant(s),

DECLARATION OF SERVICE

ss.:

ROBERT JAMES CLARK, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the SUMMONS; COMPLAINT; On 9/11/2020 and served the same on 9/14/2020 at 3:10 PM by delivery and leaving a copy with:

Kris Osborne - Administrative Assistant, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of Corporation Service Company, registered agent for Smith's Food & Drug Centers, INC., at the registered address of:

112 N Curry St, Carson City, NV 89703-4934

A description of Kris Osborne is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Caucasian	Blond	41-45	5'1 - 5'6	161-180 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF WASHOE

Executed on: 9/15/2020  
by ROBERT JAMES CLARK  
Registration: R -060170

No notary is required per NRS 53.045

x

ROBERT JAMES CLARK  
Registration: R -060170  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com





FILED  
Electronically  
CV20-01426  
2020-09-15 03:32:15 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8068609

1 STEVEN M. HESS, ESQ.  
2 State Bar #2251  
3 HESS & ASSOCIATES  
4 KYLE S. HESS, ESQ.  
5 State Bar #13351  
6 485 West 5<sup>th</sup> Street  
7 Reno, NV 89503  
8 (775) 323-1311  
9 Attorneys for Plaintiff

10  
11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR THE COUNTY OF WASHOE**

13 KATHRYN AGNEW,

14 Plaintiff,

15 v.

CASE NO.: CV20-01426

DEPT. NO.: 1

16 SMITH'S FOOD KING PROPERTIES,  
17 INC., doing business as a Foreign  
18 Corporation, SMITH'S FOOD & DRUG  
19 CENTERS, INC., doing business as a  
20 Foreign Limited-Liability Company,  
21 KROGER DEDICATED LOGISTICS, CO.,  
22 doing business as a Foreign  
23 Corporation and DOES I-V,  
24 inclusive,

25 Defendants.

26 **PROOF OF SERVICE**

27 COMES NOW Plaintiff, KATHRYN AGNEW, by and through counsel of record,  
28 HESS & ASSOCIATES, and respectfully submits to this Court the attached DECLARATION  
29 OF SERVICE on Defendant, KROGER DEDICATED LOGISTICS, CO.

30 **AFFIRMATION**

31 Pursuant to NRS 239B.030, the preceding document does not contain the social  
32 security number of any person.

1 DATED this 15 day of September, 2020.

2  
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5 HESS & ASSOCIATES  
6 Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of HESS & ASSOCIATES, and that on this date I served a copy of the foregoing document on the following parties:

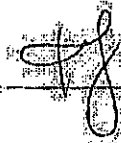
✓  
\_\_\_\_\_  
Placing a true copy thereof in a sealed envelope and depositing the same in the United States Mail at Reno, Nevada, postage fully prepaid, following ordinary business practices.  
\_\_\_\_\_  
U.S. Mail, Certified, Return Receipt Requested.  
\_\_\_\_\_  
Personal service  
\_\_\_\_\_  
Facsimile (FAX)  
\_\_\_\_\_  
Email

addressed to:

Smith's Food & Drug Centers, Inc.  
Kroger Dedicated Logistics, Co.  
112 North Curry Street  
Carson City, NV 89703

Dated: 9-15-20

SIGNED: \_\_\_\_\_



CODE 1067

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE

Kathryn Agnew,

Plaintiff(s),

VS.

CASE NO: CV20-01426

Smith's Food King Properties, Inc., et al,  
Defendant(s).

DECLARATION OF SERVICE

ss:

ROBERT JAMES CLARK, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the SUMMONS; COMPLAINT; On 9/11/2020 and served the same on 9/14/2020 at 3:10 PM by delivery and leaving a copy with:

Kris Osborne - Administrative Assistant; pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of Corporation Service Company, registered agent for Kroger Dedicated Logistics, Co., at the registered address of:

112 N Curry St, Carson City, NV 89703-4934

A description of Kris Osborne is as follows:

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Caucasian	Blond	41-45	5'1 - 5'6	161-180 Lbs

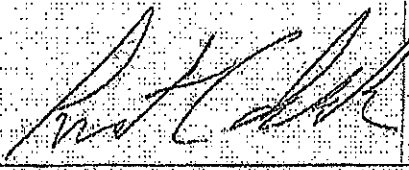
Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

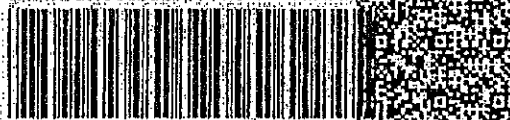
Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF WASHOE

Executed on: 9/15/2020  
by ROBERT JAMES CLARK  
Registration: R-060170

No notary is required per NRS 53.045

X   
ROBERT JAMES CLARK  
Registration: R-060170  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



Order#: R107204B NVPRE411

FILED  
Electronically  
CV20-01426  
2020-10-28 01:37:49 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8137753 : yvlloria

1 Code 3860  
2 STEVEN M. HESS, ESQ.  
3 State Bar #2251  
4 HESS & ASSOCIATES  
5 KYLE S. HESS, ESQ.  
6 State Bar #13351  
7 485 West 5<sup>th</sup> Street  
8 Reno, NV 89503  
9 (775) 323-1311  
10 Attorneys for Plaintiff

11  
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF WASHOE**

14 KATHRYN AGNEW,  
15  
16 Plaintiff,

17 v.

CASE NO.: CV20-01426

DEPT. NO.: 1

18 SMITH'S FOOD & DRUG  
19 CENTERS, INC., ("SFDC"), doing business as a  
20 Foreign Limited-Liability Company,  
21 and DOES I-V,  
22 inclusive,

23 Defendants.  
24 \_\_\_\_\_/

25 **AMENDED COMPLAINT FOR DAMAGES**

26 COMES NOW Plaintiff, KATHRYN AGNEW by and through counsel, HESS  
27 & ASSOCIATES, and for cause of action as to the Defendant, and each of them, alleges  
28 and complains as follows:

**STATEMENT OF FACTS**

1. Events and occurrences hereinafter alleged occurred within the confines of the  
State of Nevada.

2. Plaintiff, KATHRYN AGNEW, is an individual, and at all times herein mentioned was  
residing within the County of Washoe, State of Nevada.



- AFFIRMATION

DATED this 23 day of October, 2020.

- 3 -

FILED  
Electronically  
CV20-01426  
2020-11-09 07:57:27 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8152693

1 STEVEN M. HESS, ESQ.  
State Bar #2251  
2 HESS & ASSOCIATES  
3 KYLE S. HESS, ESQ.  
State Bar #13351  
4 485 West 5<sup>th</sup> Street  
Reno, NV 89503  
5 (775) 323-1311  
Attorneys for Plaintiff

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9 KATHRYN AGNEW,  
10 Plaintiff,

11 v.

CASE NO.: CV20-01426

12 DEPT. NO.: 1

13 SMITH'S FOOD KING PROPERTIES,  
INC., doing business as a Foreign  
14 Corporation, SMITH'S FOOD & DRUG  
CENTERS, INC., doing business as a  
15 Foreign Limited-Liability Company,  
KROGER DEDICATED LOGISTICS, CO.,  
16 doing business as a Foreign  
17 Corporation and DOES I-V,  
inclusive,

18 Defendants.  
19 \_\_\_\_\_/

20 **PROOF OF SERVICE**

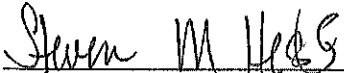
21 COMES NOW Plaintiff, KATHRYN AGNEW, by and through counsel of record,  
22 HESS & ASSOCIATES, and respectfully submits to this Court the attached DECLARATION  
23 OF SERVICE on Defendant, SMITH'S FOOD & DRUG CENTERS, INC.  
24

25 **AFFIRMATION**

26 Pursuant to NRS 239B.030, the preceding document does not contain the social  
27 security number of any person.  
28



1 DATED this 9 day of November, 2020.

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5 HESS & ASSOCIATES  
6 Attorneys for Plaintiff  
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### CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of HESS & ASSOCIATES, and that on this date I served a copy of the foregoing document on the following party:

✓  
\_\_\_\_\_ Placing a true copy thereof in a sealed envelope  
and depositing the same in the United States Mail  
at Reno, Nevada, postage fully prepaid, following  
ordinary business practices.

\_\_\_\_\_ U.S. Mail, Certified, Return Receipt Requested.

\_\_\_\_\_ Personal service

\_\_\_\_\_ Facsimile (FAX)


\_\_\_\_\_ Reno Carson Messenger Service

\_\_\_\_\_ Email

addressed to:

Jerry Busby, Esq.  
3016 W. Charleston Blvd., Ste. 195  
Las Vegas, NV 89102

DATED: 11-9-20

SIGNED: 

CODE 1067

**IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE**

**Kathryn Agnew,**

Plaintiff(s),

VS.

CASE NO: CV20-01426

**Smith's Food & Drug Centers, INC., ("SFDC"), doing  
business as a Foreign Limited-Liability Company,  
Defendant(s),**

DECLARATION OF SERVICE

ss.:

**ROBERT JAMES CLARK**, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **SUMMONS; AMENDED COMPLAINT FOR DAMAGES** On 11/2/2020 and served the same on 11/2/2020 at 3:02 PM by delivery and leaving a copy with:

**Kris Osborne - Administrative Assistant**, pursuant to NRS 14.020 as a person of suitable age and discretion, of the office of Corporation Service Company, registered agent for Smith's Food & Drug Centers, INC., ("SFDC"), doing business as a Foreign Limited-Liability Company, at the registered address of:

**112 N Curry St, Carson City, NV 89703-4934**

**A description of Kris Osborne is as follows**

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Caucasian	Blond	41-45	5'1 - 5'6	161-180 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

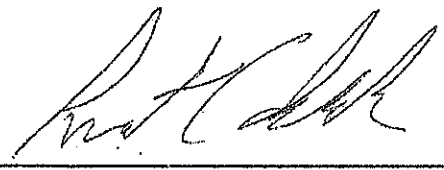
Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

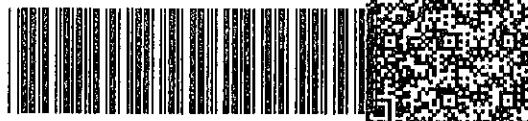
STATE OF NEVADA  
COUNTY OF WASHOE

Executed on: 11/2/2020  
by **ROBERT JAMES CLARK**  
Registration: R -060170

No notary is required per NRS 53.045

X

  
\_\_\_\_\_  
**ROBERT JAMES CLARK**  
Registration: R -060170  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



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Clerk of the Court  
Transaction # 8152693

1 STEVEN M. HESS, ESQ.  
State Bar #2251  
2 HESS & ASSOCIATES  
KYLE S. HESS, ESQ.  
3 State Bar #13351  
4 485 West 5<sup>th</sup> Street  
Reno, NV 89503  
5 (775) 323-1311  
Attorneys for Plaintiff  
6

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9 KATHRYN AGNEW,  
10 Plaintiff,

11 v.

CASE NO.: CV20-01426

12 DEPT. NO.: 1

13 SMITH'S FOOD KING PROPERTIES,  
INC., doing business as a Foreign  
14 Corporation, SMITH'S FOOD & DRUG  
CENTERS, INC., doing business as a  
15 Foreign Limited-Liability Company,  
KROGER DEDICATED LOGISTICS, CO.,  
16 doing business as a Foreign  
17 Corporation and DOES I-V,  
inclusive,  
18

19 Defendants.  
20

21 **PROOF OF SERVICE**

22 COMES NOW Plaintiff, KATHRYN AGNEW, by and through counsel of record,  
23 HESS & ASSOCIATES, and respectfully submits to this Court the attached DECLARATION  
24 OF SERVICE on Defendant, SMITH'S FOOD & DRUG CENTERS, INC., via Jerry Busby,  
25 Esq.

26 **AFFIRMATION**

27 Pursuant to NRS 239B.030, the preceding document does not contain the social  
28 security number of any person.

1  
2 DATED this 9 day of November, 2020.  
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5 Steven M Hess  
6 HESS & ASSOCIATES  
7 Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of HESS & ASSOCIATES, and that on this date I served a copy of the foregoing document on the following party:

\_\_\_\_\_ ✓  
Placing a true copy thereof in a sealed envelope and depositing the same in the United States Mail at Reno, Nevada, postage fully prepaid, following ordinary business practices.

\_\_\_\_\_ U.S. Mail, Certified, Return Receipt Requested.

\_\_\_\_\_ Personal service

\_\_\_\_\_ Facsimile (FAX)

\_\_\_\_\_ Reno Carson Messenger Service

\_\_\_\_\_ Email

addressed to:

Jerry Busby, Esq.  
3016 W. Charleston Blvd., Ste. 195  
Las Vegas, NV 89102

DATED: 11-9-20

SIGNED: 

CODE 1067

**IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE**

Kathryn Agnew,

Plaintiff(s),

VS.

CASE NO: CV20-01426

Smith's Food & Drug Centers, INC., ("SFDC"), doing  
business as a Foreign Limited-Liability Company,  
Defendant(s),

DECLARATION OF SERVICE

ss.:

**JOHN WHITE**, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **SUMMONS; AMENDED COMPLAINT FOR DAMAGES** On 11/2/2020 and served the same on 11/3/2020 at 11:16 AM by delivery and leaving a copy with:

By then and there personally delivering a true and correct copy of the documents into the hands of and leaving with **Mary Hoskins** whose title is **Receptionist**.

Served on behalf of **Jerry Busby, Esq.**

Service Address: **CooperLevenson - 3016 W Charleston Blvd Ste 195 , Las Vegas, NV 89102-1973**

**A description of Mary Hoskins is as follows**

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	Caucasian	Brown	Over 60	5'1 - 5'6	141-160 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

STATE OF NEVADA  
COUNTY OF Clark

Executed on: 11/3/2020  
by JOHN WHITE  
Registration: R-2019-00318

No notary is required per NRS 53.045

X

JOHN WHITE  
Registration: R-2019-00318  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



FILED  
Electronically  
CV20-01426  
2020-11-24 08:33:31 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 8175991 : csulezic

1 **\$1560**  
JERRY S. BUSBY  
2 Nevada Bar #001107  
COOPER LEVENSON, P.A.  
3 3016 West Charleston Boulevard - #195  
Las Vegas, Nevada 89102  
4 (702) 366-1125  
FAX: (702) 366-1857  
5 [jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
Attorneys for Defendant  
6 SMITH'S FOOD & DRUG CENTERS, INC.

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AN FOR THE COUNTY OF WASHOE**

9 KATHRYN AGNEW,  
10 Plaintiff,

11 v.

12 SMITH'S FOOD KING PROPERTIES, INC.,  
doing business as a Foreign Corporation,  
13 SMITH'S FOOD & DRUG CENTERS, INC.,  
doing business as a Foreign Limited-Liability  
14 Company, KROGER DEDICATED  
LOGISTICS, CO., doing business as a Foreign  
15 Corporation and DOES I-V, inclusive,  
16 Defendants.

Case No. CV20-01426  
Dept. No. 1

**DEFENDANT SMITH'S FOOD & DRUG  
CENTERS, INC.'S ANSWER TO  
PLAINTIFF'S AMENDED COMPLAINT**

17  
18 COMES NOW, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., by and through its  
19 attorney of record, JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A., and hereby  
20 answers Plaintiff's Amended Complaint on file herein as follows:

21 **I.**

22 This answering Defendant states that it does not have sufficient knowledge or information upon  
23 which to base a belief as to the truth of the allegations contained in Paragraphs 1, 2, 3, 4 and 6 of  
24 Plaintiff's Amended Complaint and upon said ground, denies each and every allegation contained  
25 therein.

26 **II.**

27 Paragraphs 5 and 7 of Plaintiff's Amended Complaint state a legal conclusion which is the  
28 sole province of the Court to determine. This answering Defendant therefore denies said Paragraphs.



**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff did not use reasonable diligence to care for her injuries, thereby aggravating said injuries as a result. Therefore, Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

**SECOND AFFIRMATIVE DEFENSE**

At the time and place alleged in Plaintiff's Amended Complaint, and for a period of time prior thereto, Plaintiff did not exercise ordinary care, caution, or prudence for the protection of her own safety, and injuries and damages complained of by Plaintiff in the Amended Complaint, if any, were directly and proximately caused or contributed to by the fault, failure to act, carelessness, and negligence of Plaintiff, and therefore Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

**THIRD AFFIRMATIVE DEFENSE**

The damage sustained by Plaintiff, if any, was caused by the acts of unknown third persons who were not agents, servants, or employees of this answering Defendant, and who were not acting in behalf of this answering Defendant in any manner or form and, as such, this Defendant is not liable in any manner to the Plaintiff.

WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of her Amended Complaint on file herein; for costs and disbursements incurred in this action; and for such other and further relief as to the Court may deem proper.

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**AFFIRMATION**

The undersigned does and hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603.040 about any persons.

Dated this 23rd day of November, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby

Jerry S. Busby  
Nevada Bar No. 001107  
3016 West Charleston Boulevard - #195  
Las Vegas, Nevada 89102  
Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of COOPER LEVENSON, P.A. and that on the 23rd day of November, 2020, I filed the foregoing **DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** electronically with the Clerk of the Court, Washoe County, Nevada, using eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement to all parties listed on the service list.

Steven M. Hess, Esq.  
HESS & ASSOCIATES  
485 West 5<sup>th</sup> Street  
Reno, NV 89503  
Attorneys for Plaintiff

By /s/ Theresa H. Rutkowski  
An Employee of  
COOPER LEVENSON, P.A.

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Hess & Associates  
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Attorneys for Plaintiff

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 \*\*\*

11 KATHRYN AGNEW,

12 Plaintiff,

Case No.: CV20-01436

13 v.

Dept. No.: 1

14 SMITH'S FOOD & DRUG CENTERS,  
15 INC., ("SFDC"), doing business as a  
16 Foreign Limited-Liability Company,  
and DOES I-V, inclusive,

17 Defendants.  
18

19 **REQUEST FOR EXEMPTION FROM ARBITRATION**

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21 COMES NOW Plaintiff, KATHRYN AGNEW, by and through her attorneys  
22 of record, HESS & ASSOCIATES, hereby requests that the above-entitled matter be exempted  
23 exempted from arbitration pursuant to Nevada Arbitration Rules 3 and 5, as this case involves an  
24 amount in excess of \$50,000.00, exclusive of interest and costs.  
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26  
27  
28

**BRIEF STATEMENT OF FACTS**

A specific summary of the facts which support Plaintiff's contention for exemption is as follows:

On or about September 28, 2019, Plaintiff, KATHRYN AGNEW, had arrived at Smith Food and Drug located at 1255 Baring Boulevard in Sparks, Nevada. As she was walking toward the entrance of the store, she fell after putting her right foot in a large hole. The large hole in the asphalt was filled with uneven cobblestone and surface water. The cobblestone and water made the hole unnoticeable.

As evident by the medical records, Plaintiff suffered a partial tear through the deep fibers of the deltoid ligament, complete disruption of the anterior talofibular ligament with partial tear of the calcaneofibular ligament, a split tear of the peroneus brevis, tenosynovitis of the flexor tendons and fibrocartilaginous calcaneonavicular coalition of the right foot and ankle.

Medical Specials to date are as follows:

**1. Current Medical Specials:**

Northern Nevada Medical Center	\$ 3,149.00
Sparks Radiology	\$ 32.00
Sparks Swift Urgent Care	\$ 1,550.00
Premier Physical Therapy	\$ 7,229.00+
Spine and Orthopedic Rehabilitation	\$ 2,000.00
Reno Diagnostic Center	\$ 1,680.00
Northern Nevada Medical Center	\$ 95,510.00
Great Basin Orthopedics	\$ 8,359.00

Plaintiff's special damages are in excess of \$111,000. Plaintiff continues to suffer from severe pain and is still receiving treatment for her injuries. Based upon the foregoing, Plaintiff requests an Order removing the case from its Order assigning it to Court Annexed Arbitration Program and further requests that this matter be set for trial.

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 25 day of November, 2020.

  
HESS & ASSOCIATES  
Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of HESS & ASSOCIATES, and that on this date I served a copy of the foregoing document on the following party:

✓

Placing a true copy thereof in a sealed envelope and depositing the same in the United States Mail at Reno, Nevada, postage fully prepaid, following ordinary business practices.

U.S. Mail, Certified, Return Receipt Requested.

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Personal service

Facsimile (FAX)

Renq Carson Messenger Service

Email

addressed to:

Jerry Busby, Esq.  
3016 W. Charleston Blvd., Ste. 195  
Las Vegas, NV 89102

DATED: 11/30/20

SIGNED: \_\_\_\_\_